

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:10-CR-172-F

UNITED STATES OF AMERICA, )  
                                )  
                                )  
v.                            )                                 ORDER  
                                )  
                                )  
BARTOLO GONZALEZ,         )  
Defendant.                  )

This matter is before the court on the letter of defendant Bartolo Gonzalez, which is docketed twice at Docket Entries 63 and 64. The court construes the letter as a motion to file an appeal out of time and a motion to appoint counsel.

The Judgment in this criminal case entered on November 9, 2011. Federal Rule of Appellate Procedure 4(b)(1) provides that in a criminal case, a defendant's notice of appeal must be filed in district court within 14 days of the entry of judgment. The defendant's notice of appeal, therefore, should have been filed on or before November 23, 2011.

The Federal Rules of Appellate Procedure, however, allows a district court to extend the time for filing a notice of appeal. Specifically, Federal Rule of Appellate Procedure 4(b)(4) provides:

Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

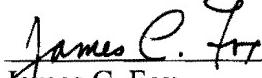
In this case, therefore, the motion to extend time should have been filed no later than December 23, 2011.

The defendant's letter, however, was filed on February 8, 2012, over a month late. The time periods contained within Rule 4(b) are "mandatory and jurisdictional." *United States v. Raynor*, 939 F.2d 191, 197 (4th Cir.1991). "A court may not enlarge the appeal period." *United States v. Stockton*, 240 Fed.Appx. 601, 601 (4th Cir.2007) (citation omitted). Because the defendant's letter, which this court construes as a motion for leave to file an appeal out of time, was filed over a month beyond the period provided by Rule 4(b)(4), it is untimely and cannot be allowed.

Accordingly, for the foregoing reasons, the defendant's motion for leave to file an appeal out of time [DE-63; DE-64] is DENIED. His motion to appoint counsel [DE-63; DE-64] is DENIED as moot.

SO ORDERED.

This the 14<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
James C. Fox  
Senior United States District Judge